

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BERKLEY JACKSON

VS.

PATRICK ALLEN MCCORMICK, and
TRUE GRIT TRANSPORTATION, INC.

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CIVIL ACTION NO. 9:22-cv-124

JURY TRIAL REQUESTED

**DEFENDANTS, PATRICK ALLEN MCCORMICK AND CP AND C SERVICES INC.'S,
NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendants, PATRICK ALLEN MCCORMICK and CP AND C SERVICES INC., file this Notice of Removal pursuant to 28 U.S.C. §§1441 and 1446, showing the following basis for removal.

INTRODUCTION

1. Plaintiff, BERKLEY JACKSON (“JACKSON”), filed Plaintiff’s Original Petition on June 10, 2022 against Defendants, PATRICK ALLEN MCCORMICK and TRUE GRIT TRANSPORTATION INC., under Cause No. CIV22-0366, pending in the 411th Judicial District Court of Polk County, Texas. Plaintiff subsequently filed his First Amended Petition on July 6, 2022.

2. Defendant, PATRICK ALLEN MCCORMICK (“MCCORMICK”), was served with Citation on June 30, 2022.

3. Defendant, TRUE GRIT TRANSPORTATION INC. (“TRUE GRIT”), was served with the Citation on June 30, 2022.

4. Defendant, CP AND C SERVICES INC. (“CP&C”), was served with Citation on July 25, 2022.

BASIS FOR REMOVAL

5. Although this case was not removable when originally filed, it became removable on July 28, 2022 upon the filing of Plaintiff's Notice of Non-Suit Without Prejudice of the non-diverse Defendant, TRUE GRIT TRANSPORTATION INC. 28 U.S.C. § 1446(b)(3); *Great N. Ry. Co. v. Alexander*, 246 U.S. 276, 281 (1918); *Hoyt v. Lane Constr. Corp.*, 927 F.3d 287, 295 (5th Cir. 2019); *Knudson v. Sys. Painters, Inc.*, 634 F.3d 968, 973–74 (8th Cir. 2011); *Ritchie v. Williams*, 395 F.3d 283, 287 n.2 (6th Cir. 2005); *Sullivan v. Conway*, 157 F.3d 1092, 1094 (7th Cir. 1998).

6. Defendants, PATRICK ALLEN MCCORMICK and CP AND C SERVICES INC., file this notice of removal within 30 days after receiving Plaintiff's Nonsuit of TRUE GRIT TRANSPORTATION INC. on July 28, 2022 (the event from which it was first ascertained that the case is one which is or has become removable), and within one year of commencement of the suit as required by 28 U.S.C. § 1446(c)(1); 28 U.S.C. § 1446(b)(3); *Price v. Wyeth Holdings Corp.*, 505 F.3d 624, 630–31 (7th Cir. 2007); *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694–96 (9th Cir. 2005); *Ritchie*, 395 F.3d at 287 n.2.

JURISDICTION

7. This court has removal jurisdiction over this lawsuit pursuant to 28 U.S.C. §§1441 and 1446 and based upon diversity of citizenship under 28 U.S.C. §1332. Plaintiff, BERKLEY JACKSON, is an individual domiciled in Texas and therefore a citizen of this state. Defendant PATRICK ALLEN MCCORMICK, is an individual domiciled in Oklahoma and therefore a citizen of that state. Defendant, CP AND C SERVICES INC., is incorporated in the state of Oklahoma with its principal place of business in Oklahoma and therefore a citizen of that state. Thus, there is diversity of citizenship between Plaintiff and the remaining Defendants.

8. All Defendants who have been properly joined and served, join in or consent to the removal of this case to federal court as required by 28 U.S.C. §1446(b)(2)(A).

9. Consistent with TEX. R. CIV. P. 47, Plaintiff seeks monetary relief “over \$250,000 but not more than \$1,000,000” in his Original Petition. Plaintiff seeks to recover damages for: past and future medical expenses; past and future pain, suffering and mental anguish; past and future physical impairment; and past and future disfigurement; past lost wages and future loss of earning capacity; as well as pre- and post-judgment interest. Therefore, the amount in controversy exceeds \$75,000, excluding interest and costs, consistent with 28 U.S.C. §1332(a).

10. All pleadings, process, orders, and other filings in the state court action in the possession of Defendants is attached to this notice as required by 28 U.S.C. §1446(a).

11. Venue is proper in this district and division under 28 U.S.C. §1441(a) because the state court where the action has been pending is located in this district and division.

12. Defendants will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

JURY DEMAND

13. Plaintiff did not demand a jury in the state court suit. Defendants request one with the filing of this removal.

CONCLUSION

For these reasons, Defendants, PATRICK ALLEN MCCORMICK and CP AND C SERVICES INC., therefore give notice of Defendants’ removal of this lawsuit to this Court, and an automatic stay of further proceedings in state district court.

Respectfully submitted,

/s/John F. Elwood

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(Do not use this e-mail for service of documents)

Designated E-Service Email Address

The following is the designation of electronic service email address for the above attorney(s) for all electronically served documents and notices, filed and unfiled, pursuant to Tex. R. Civ. P. 21(f)(2) and 21(a): RCQZ-ESERVICE@RAMEY-CHANDLER.COM.

This is the ONLY electronic service email address for the above attorney(s), and service through any other email address will be considered invalid.

**ATTORNEYS FOR DEFENDANTS,
PATRICK ALLEN MCCORMICK and
CP AND C SERVICES INC.**

OF COUNSEL:

RAMEY, CHANDLER, QUINN & ZITO, P.C.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to all opposing counsel, in accordance with the rules, on the 24th day of August, 2022.

Kiernan McAlpine
DASPIT LAW FIRM
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Houston, Texas 77002
Attorney for Plaintiff

Via email

/s/John F. Elwood

John F. Elwood